



Office of the Clerk
UNITED STATES COURT of APPEALS for the NINTH
CIRCUIT
95 Seventh Street, Post Office Box 193939
San Francisco, California 94119-3939



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AMENDMENTS TO THE RULES
Effective January 1, 2001

<i>RULE</i>	<i>TITLE</i>	<i>New or Revised</i>	<i>Purpose of Amendment</i>
4-1(c)	Counsel in Criminal Appeals (<i>New section No. 6</i>)	Both	To clarify counsel's obligations under <u>Anders v. California</u> , and the Court's treatment of such briefs.
9-1	Release in Criminal Cases	Both	To conform Circuit Rule 9 to FRAP 27(a)(4) and permit the filing of a reply to a response.
25-2	Circuit Advisory Committee Note to Rule 25-2	New	To apprise the bar of the mechanism to address delay in proceedings.
28-4	Extensions of Time and Enlargements of Size for Consolidated and Joint Briefing - <u>Motion Procedure</u>	Revised	Technical amendment to Circuit Rule 28-4 to make it consistent with a recent abrogation of Circuit Rule 32.
31-2	Circuit Advisory Committee Note to Rule 31-2.2	New	To provide litigants with a policy statement regarding the Court's treatment of motions for extension of time.

CIRCUIT RULE 4-1

COUNSEL IN CRIMINAL APPEALS

This rule applies to appeals in categories of cases listed in 18 U.S.C. § 3006A.

(a) Continuity of Representation on Appeal

(b) Application for Indigent Status on Appeal

(c) Withdrawal of Counsel After Filing the Notice of Appeal

(1) through (4) *****

(5) An affidavit or signed statement from the defendant showing that the defendant has been advised of his or her rights with regard to the appeal and expressly stating that the defendant wishes to dismiss the appeal voluntarily.

Any motion filed pursuant to this section not accompanied by defendant's affidavit or signed statement shall set forth the reasons for such omission.

[deleted last paragraph of no. 5]

(6) Alternatively, if after conscientious review of the record appointed counsel believes the appeal is frivolous, on or before the due date for the opening brief, appointed counsel shall file a separate motion to withdraw and an opening brief that identifies anything in the record that might arguably support the appeal, with citations to the record and applicable legal authority. The motion and brief shall be accompanied by proof of service on defendant. See Anders v. California, 386 U.S. 738 (1967), and United States v. Griffy, 895 F.2d 561 (9th Cir. 1990). The cover of the opening brief shall state that the brief is being filed pursuant to Anders v. California. The filing of a motion to withdraw as counsel along with a proposed Anders brief serves to vacate the previously established briefing schedule.

To facilitate this Court's independent review of the district court proceedings, counsel shall designate all appropriate reporter's transcripts, including but not limited to complete transcripts for the plea hearing and sentencing hearing, and shall include the transcripts in the excerpts of record. Counsel are advised to consult Ninth Circuit Rule 30-1.

When an appointed attorney has properly moved for leave to withdraw pursuant to Anders and has included all appropriate reporter's transcripts, this Court will establish a briefing schedule permitting the defendant to file a pro se supplemental opening brief raising any issues that defendant wishes to present. The order will also direct appellee by a date certain either to file its answering brief or notify the court by letter that no answering brief will be filed. (New 01/2001)

(d) Post Appeal Proceedings

(e) Counsel's Claim for Fees and Expenses

CIRCUIT RULE 9-1

RELEASE IN CRIMINAL CASES

9-1.1 Release Pending Conviction

(a) ****

(b) The appellee shall file a response to appellant's memorandum within 7 days of receipt thereof. *(Rev. 01/2001)*

(c) Appellant may file an optional reply within three (3) days of receipt of appellee's response to the bail motion. The appeal shall be decided promptly. *(New 01/2001)*

9-1.2 Release Pending Appeal

(a) ****

(b) ****

(c) ****

(d) A movant for bail pending appeal may file an optional reply within three (3) days of receipt of the government's response to the bail motion. *(New 01/2001)*

(e) If the appellant is on bail at the time the motion is filed in this court, that bail will remain in effect until the court rules on the motion. *(Rev. 01/2001 - changed from d to e)*

CIRCUIT RULE 25-2

COMMUNICATIONS TO THE COURT

All communications to the court, including papers to be filed, shall comply with FRAP 32 and shall be addressed to the Clerk at the United States Court of Appeals, Post Office Box 193939, San Francisco, California 94119-3939. When it is intended that a communication come to the personal attention of a judge or judges, sufficient copies, not including the original, shall be supplied to the Clerk so that the Clerk can furnish a copy to each judge.

Cross Reference: Circuit Rules 27-1, 27-2, 27-3, and 27-6, Motions Practice; Introduction, Pages xvii - xxi.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 25-2

The address for same day or overnight mail delivery is Clerk, United States Court of Appeals, 95 Seventh Street, San Francisco, California 94103-1526.

Notice of Delay: If an appeal or petition has been pending before the court for any period in excess of those set forth below, the party is encouraged to communicate this fact to the court. Such notice can be accomplished by a letter to the Clerk identifying the case and the nature of the delay. Generally, such a letter would be appropriate if:

- (1) a motion has been pending for longer than four (4) months;*
- (2) the parties have not received notice of oral argument or submission on the briefs within fifteen (15) months after the completion of briefing;*
- (3) a decision on the merits has not been issued within nine (9) months after submission;*
- (4) the mandate has not issued within twenty-eight (28) days after the time to file a petition for rehearing has expired; or*
- (5) a petition for rehearing has been pending for longer than six (6) months.*

Litigants are advised that the complexity of a given matter may preclude court action within the noted time period. (Notice of Delay - New 01/2001)

CIRCUIT RULE 28-4
EXTENSIONS OF TIME AND ENLARGEMENTS OF SIZE
FOR CONSOLIDATED AND JOINT BRIEFING

In a case or consolidated cases involving multiple separately represented appellants or appellees, all parties on a side are encouraged to join in a single brief to the greatest extent practicable. As set forth below, the court will grant a reasonable extension of time and enlargement of size for filing such a joint brief or for filing a brief responding to a joint brief or to multiple briefs.

Notice Procedure: If no previous extension of the filing deadline or enlargement of brief size has been obtained and the case has not been expedited, the court will grant a 21-day extension of time and an enlargement of five (5) pages, 1,400 words or 130 lines of monospaced text for a joint brief upon the filing of the notice at Appendix of Forms, No. 7 to these rules. (Rev. 7/1/2000)

If no previous extension of the filing deadline or enlargement of brief size has been obtained and the case has not been expedited, the court will grant a 21-day extension of time and an enlargement of five (5) pages, 1,400 words or 130 lines of monospaced text to a party filing a single response to a joint brief or multiple briefs upon the filing of the notice at Appendix of Forms, No. 7. Upon receipt of such a notice, a corresponding adjustment to the responsive brief's due date will be recorded on the docket. (Rev. 7/1/2000)

All notices described in this rule must be filed at least 7 days prior to the brief's due date and signed by counsel for all parties on that side. If the parties on a side have different due dates for their briefs, the notice must be filed at least 7 days before the earliest due date. If the parties on a side have different due dates for their briefs, the extended due date shall be calculated from the latest due date.

Motion Procedure: If parties filing a joint brief or responding to multiple briefs or joint briefs wish to obtain a lengthier extension of time or greater enlargement of brief size than described above, or if the case has been previously expedited, the extension or enlargement request must be made by written motion. Motions for extensions of time must be filed at least seven (7) days prior to the brief's due date; joint motions for extensions of time and/or to enlarge brief size must be signed by all counsel filing the motion. If the parties on a side have different due dates for their briefs, the motion must be filed at least seven (7) days prior to the earliest due date. (Rev. 01/2001)

The previous grant of an extension of time under Circuit Rule 31-2.2(a) precludes a request for relief under this rule absent a showing of extraordinary and compelling circumstances. (Rev. 7/97)

Cross reference: Circuit Rule 31-2.2, 32, and 33.

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 28-4

Rule 28-4 encourages separately represented parties to file a joint brief to avoid burdening the court with repetitive presentations of common facts and issues. Such joint briefing may require additional time and size. Accordingly, upon written notice, the court will grant a 21-day extension of time for filing a joint brief or a brief responding to multiple briefs. Similarly, upon written notice, the court will grant five (5) additional, double-spaced pages, 1,400 additional words, or 130 lines of monospaced text for filing a joint brief or a brief responding to a joint brief or to multiple briefs. A further enlargement of time or size may be granted upon written motion supported by a showing of good cause. (Rev. 7/1/2000)

In exceptionally complex, multi-party criminal cases, the parties may request a case conference before

the appellate commissioner. See Circuit Advisory Committee Note to Rule 33-1, Section B. (eff. 7/1/97)

CIRCUIT RULE 31-2

TIME FOR SERVICE AND FILING

31-2.1 Requirement of Timely Filing

31-2.2 Extensions of Time for Filing Briefs

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 31-2.2

If a party files a motion for a first extension of time to file a brief on or before the due date for the brief, and the court does not rule on the motion until shortly before the due date or after the due date for the brief, the court ordinarily will grant some additional time to file the brief even if the court does not grant the motion in full. Multiple motions for extension of time to file a brief are disfavored, however, and the court may decline to grant relief if a successive motion fails to demonstrate diligence and substantial need.

If the court does not act on a motion for extension of time to file a brief before the requested due date, the court nonetheless expects the moving party to file the brief within the time requested in the motion. The brief should be accompanied by a letter stating that a motion for an extension of time is pending. (New 01/2001)